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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,096

03/30/2004

Kiu-hac Jung

1793.1212

3087

49455 7590 08/08/2007
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EXAMINER

LAMB, CHRISTOPHER RAY

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

08/08/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/812,096	Applicant(s) JUNG ET AL.	
	Examiner Christopher R. Lamb	Art Unit 2627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-39.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see note below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/William R. Korzuch/
SPE, Art Unit 2627

Note 11: Applicant has proposed an amendment to the specification. The amendment was intended to overcome the rejection of claims 30-34 under 35 USC 101. However, because the amendment still defines a computer-readable medium as "a computer data signal embodied in a carrier wave," it is still non-statutory. Therefore the amendment does not overcome the 35 USC 101 rejection. Please see the Interim Guidelines for Examination of Patent Applicants for Patent Subject Matter Eligibility, especially pages 55-57.

Next, applicant argues that there is no "undue experimentation" caused by the "slight difference" between the size disclosed in Fox and the size disclosed in the application. However, as noted in the previous Office Action, Fox does not disclose sufficient details for one of ordinary skill in the art to make and use the invention described in Fox, much less one of a different size. Fox is an article describing the direction of secret research at Phillips rather than an enabling disclosure of a new technology.

Third, Applicant argues with the 35 USC 112 rejection of claims 1-39. Applicant cites MPEP section 2173.04 to support their argument that the claims are merely broad rather than unclear. However, MPEP 2173.04 begins "If the scope of the subject matter embraced by the claims is clear...then the claims comply with 35 USC 112, second paragraph." In this case the scope of the claims is not clear. In claim 1, for example, the only method step is the step of inserting the sync code. The other language in the claim describes the sync code to be inserted, and states that a pattern length in the code is "based upon" the divided value. This language is not clear because in the specification the pattern length is longer than the divided value: "based upon" and "longer than" are not equivalents. Applicant argues that "based upon" is simply broad language that includes the invention (which states that the pattern is longer than the value), but if "based upon" can mean longer than, it could also mean shorter than or equal to, so the phrase "based upon" is so indefinite as to become meaningless, rendering the scope of the claim unclear.